Community Appearance and Design Controls after *Lanvale*

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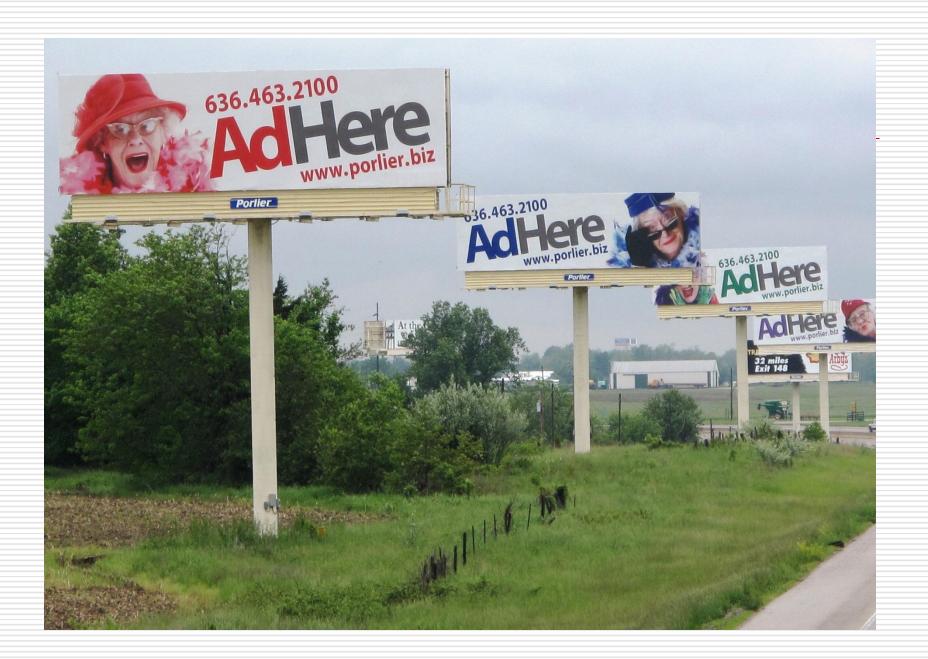
Here are some examples of uses of land that may be subject to zoning regulations concerning their appearance



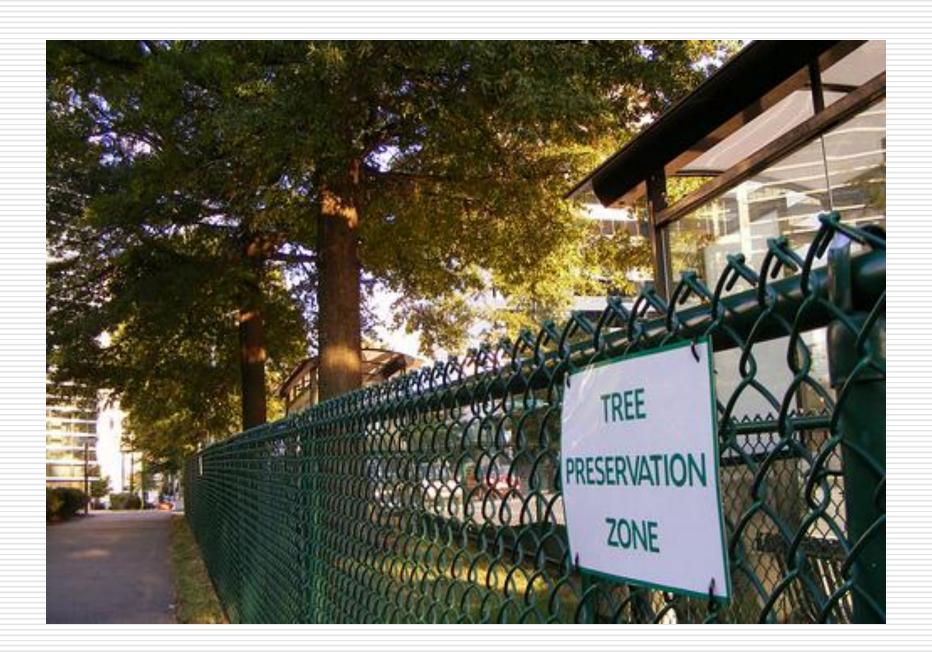




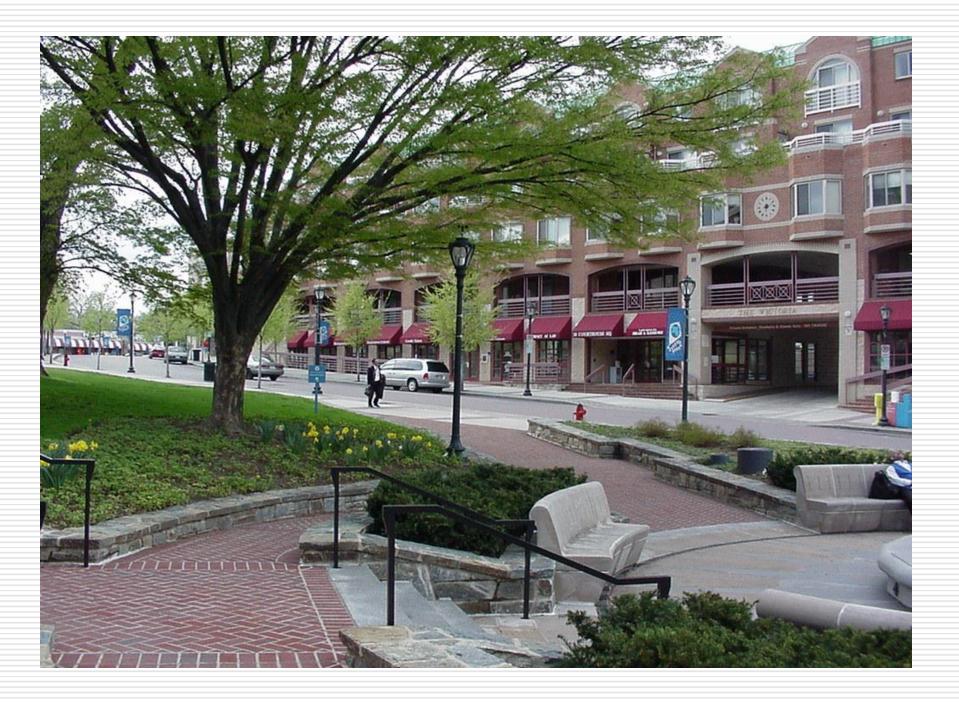


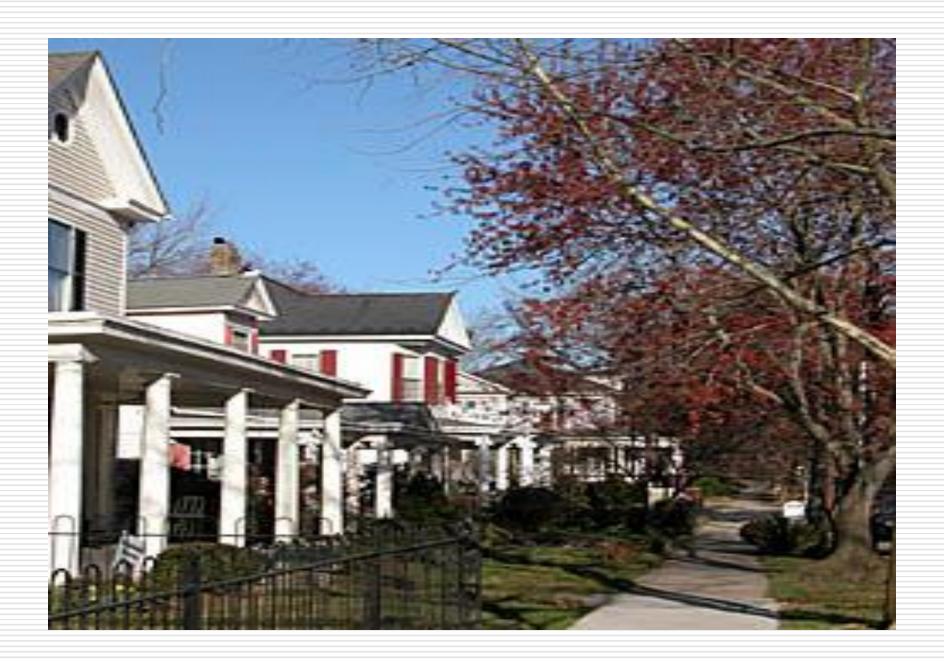








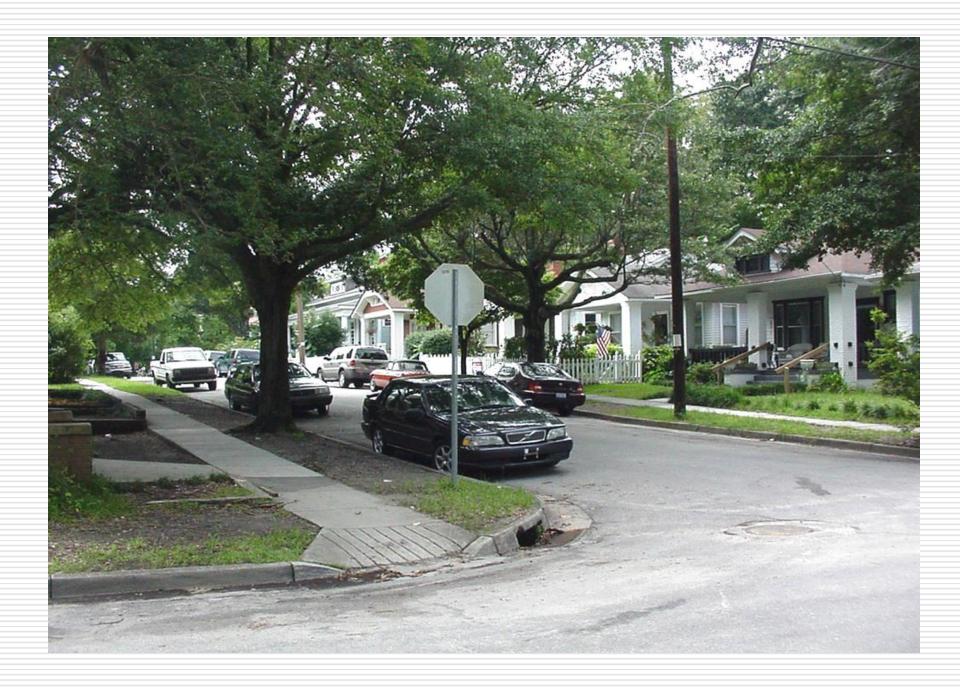














The Lanvale Properties Case

- N.C. Supreme Court ruled county "adequate public facilities ordinance (APFO)" invalid as it applied to public schools
- □ If school capacity inadequate, developers expected to "mitigate" by postponing or scaling down development or paying a "voluntary mitigation fee(VMF)"

- Court held that zoning enabling statutes failed to authorize APF programs with these mitigation measures
- ☐ G.S. 153A-341 (county zoning purposes) includes facilitating "the efficient and adequate provision of . . . schools . . ."
- □ But G.S. 153A-340 (listing means or tools for achieving zoning purposes) furnished no express authorization for VMFs

- ☐ G.S.153A-4 declares that county statutes
 - "shall be broadly construed and grants of power shall be construed to include any powers that are reasonably expedient to the exercise of the power."

- ☐ Court holds that G.S. 153A-4 is a rule of statutory construction rather than a general directive to give the zoning statutes broadest possible construction
- ☐ G.S.153A-4 applies only when
 - (1) statutes to be construed are <u>ambiguous</u>, OR
 - (2) its application is necessary to give effect to "any powers that are reasonably expedient to (a county's) exercise of the (zoning) power"

- County zoning statutes were not ambiguous; no broad construction; no express authority for APF program
- Additionally, APF provisions were not "reasonably expedient" to the zoning power, apparently because either
 - Mitigation fees unreasonably high, OR
 - Fees were unsuitable means for achieving the allowable zoning purpose of facilitating school construction

Implications for Community Appearance and Design Controls

- ☐ G.S. 160A-4 ("Broad Construction") declares that:
 - Municipal statutes "shall be broadly construed" AND
 - Grants of power "shall be construed to include any additional and supplemental powers that are reasonably necessary or expedient to carry them into execution and effect."

- ☐ G.S. 160A-383 ("Purposes in View") declares that zoning regulations:
 - "(S)hall be made with reasonable consdieration, . . . as to the <u>character of the district</u> and its peculiar suitability for particular uses , and with a view to <u>conserving the value of buildings</u> and encouraging the most appropriate use of land throughout such city."
- ☐ No mention in G.S. 160A-383 of "appearance," "aesthetics," "architectural style," or "design"

- □ G.S. 160A-381(a) ("Grant of power") declares in part that zoning regulations:
 - "(M)ay regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts, and open spaces, the density of population, the location and use of buildings, structures, and land..."
- No mention in G.S. 160A-381(a) of "appearance," "aesthetics," "architectural style," or "design"

- Language of G.S. 160A-383 and 160A-381(a) is unambiguous and does not expressly authorize appearance or design controls, so broad construction mandate does not apply
- □ Key question, then, is whether particular ordnance or set of regulations are a reasonably necessary or expedient means of "conserving the value of buildings and encouraging the appropriate use of land . . . "

How a court might rule if a community appearance or design control ordinance were challenged might depend on the following considerations:

(1)

What is the effect of <u>presumption of validity</u> that applies to zoning ordinances?

(2)

Is there North Carolina <u>legal</u>
precedent regarding appearance standards?

(3)

Is there <u>specific enabling legislation</u> that specifically authorizes the use of design and appearance controls in particular circumstances?

(4)

Is there <u>local legislation</u> authorizing appearance/design controls for buildings other than for historic properties?

(5)

How <u>pervasive</u> are appearance and design controls in this state?

(6)

To what extent is the regulatory program innovative and different?

(7)

Does the ordinance establish a <u>design</u> review board or similar agency to administer the regulations?

(8)

Are the appearance standards and design controls concrete and specific?

(9)

Are the regulations in question <u>based</u> on the context in which affected structures are located?

(10)

Does the regulatory program <u>intrude</u> on <u>private property rights</u> in a substantial or unexpected way?

Community Appearance and Design Controls

- Legal validity as applied non-historic buildings is uncertain
- Lanvale refocuses attention on scope of the zoning power, but does not change the nature of the design controls debate in a major way
- Legal reception will depend on nature of regulations involved and whether they complement traditional zoning tools and objectives

Thanks for your attention.

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